

Notice of Allowability

Application No.

09/966,971

Examiner

Bradford C Pantuck

Applicant(s)

SCHULZE, DALE R.

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment 07/26/2004.
2. ☒ The allowed claim(s) is/are 1-40.
3. ☒ The drawings filed on 09/28/2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION***Election/Restrictions***

Claims 1 and 21 are generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 2, 5, 6, 9-13, 15, 17-20, 22-26, 28-33, 35, and 37-40, directed to the species of cutting means on the wire, kind of anastomosis arrangement (end to side vs. end to side), and ways to do an anastomosis procedure [see Requirement for Restriction/Election of August 27, 2003] are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Dermott Cook on October 6, 2004.

The application has been amended as follows:

In claim 1, line 13, --lumens of—has been inserted in between “passageway between” and “said vessels.”

In claim 21, line 13, --lumens of—has been inserted in between “between” and “said vessels.”

Allowable Subject Matter

Claims 1-40 are allowed.

The following is an examiner's statement of reasons for allowance:

Regarding Claim 1, none of the prior art of record, alone or in combination, discloses an arrangement for implementing a vascular anastomosis, including a wire, and a means for implementing the anastomosis, in combination with means for causing the wire to cut through adjoining walls of vessels, *capable of* creating a fluid flow passageway *between lumens of the vessels*, as set forth by the applicant. Specifically, U.S. Patent No. 6,478,804 B2 to Vargas et al. does not disclose a wire that cuts through more than one wall, and his wire (124) does not create (and is not capable of creating) a fluid flow passageway between the lumens of the two vessels because the vessels are not touching each other in the most relevant embodiment shown in Figures 24-27.

Regarding Claim 21, none of the prior art of record, alone or in combination, discloses a method for implementing a vascular anastomosis and *subsequently* creating a fluid flow

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passageway *between the lumens of the vessels*, by inserting a wire into the target vessel and using the wire to cut through adjoining *walls* of the blood vessels, as set forth by the applicant.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (703) 308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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October 6, 2004

JULIAN W. WOO
PRIMARY EXAMINER

Julian W. Woo